IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 21692 of 2004

Between:

1 R. Munuswamy, S/o. Ramalingam,
R/o. Atakanitippa vill, Pernadu Post,
Sullurpet Mdl., Nellore District.
2 R. Vijayakumari, W/o. R. Munuswamy,
R/o. Atakanitippa Vill, Pernadu Post,
Sullurpet Mdl., Nellore District.

..... PETITIONERS

AND

The Mandal Revenue Officer,

Sullurpet Mandal, Sullurpet, Nellore District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue order or direction more particularly in the nature of Writ of Mandamus declaring the action of Respondent herein in passing order in proceedings No.Rc.A.449/04 dt.07.09.2004 as illegal, arbitrary and against the principles of Natural justice.

Counsel for the Petitioner: MR.K.VENKATA REDDY

Counsel for the Respondents: GP FOR REVENUE

The Court at the stage of admission made the following:

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 21692 of 2004

ORDER:

The present writ petition is filed to declare the proceedings in Rc.A.449/04 dated 07-09-2004, issued by the respondent- Manda Revenue Officer, as illegal and arbitrary.

2. The respondent passed the order resuming the land admeasuring ac.05.02 cents in Survey No.70/A5 to the Government, as the assignee has violated the D Form patta conditions.

3. The learned counsel for the petitioners contended that before passing the impugned order, no notice was issued by the respondent and the factum of filing of injunction petition in I.A.No.526 of 2003, filed by the petitioner, was also not taken into consideration inasmuch as the respondent himself is a party to the civil suit and hence, prays to quash the proceedings as the respondent has violated the principles of natural justice.

4. The learned Government Pleader for Revenue contended that though there is an alternative remedy is available to the petitioners to file an appeal before the Revenue Divisional Officer concerned, the petitioner filed this writ petition and therefore, the writ petition is not maintainable.

5. There cannot be any dispute that the alternative remedy is not a bar in exercising the jurisdiction under Article 226 of the Constitution of India by this Court, at least in two conditions viz., where the jurisdiction of the authority is under challenge? or whether the principles of natural justice have been violated? With regard to the giving of notices is concerned, as

seen from the impugned proceedings, though it is stated that notices were served on the occupants, but according to the learned counsel for the petitioners, they have not received any notice from the respondent, before passing the orders. The impugned order remains silent with regard to the receipt of notices by the writ petitioners is concerned.

6. Admittedly, the writ petitioners filed a civil suit in O.S.No.238 of 2003 on the file of Junior Civil Judge, Sullurpet, Nellore District, wherein they filed I.A.No.526 of 2003 and obtained *ex parte* injunction in the said suit. The Mandal Revenue Officer, Sullurpet, is made as a party in the said suit. But, even he himself as a party to the civil litigation, he ought to have passed the impugned order, taking into consideration the injunction order passed by the Junior Civil Judge, Sullurpet.

7. Therefore, as the principles of natural justice have been violated, the impugned order dated 07-09-2004 can be set aside, with a direction to the respondent-Mandal Revenue Officer, Sullurupet, to take appropriate decision after affording reasonable opportunity to the writ petitioners and also such other persons who are interested in the land.

8. With the above direction, the writ petition is disposed of. There shall be no order as to costs.

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November 25, 2004

Kvr

TO

1. The Mandal Revenue Officer, Sullurpet Mandal,

Sullurpet, Nellore District.

2 Two C.Cs. to the G.P. for Revenue, High Court Buildings,

High Court of A.P., Hyderabad, (OUT)

3 Two C.D. Copies.